IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5-2-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.12113 of 1998

P. Palanisamy Gounder ... Petitioner

Vs.

1. State of Tamil Nadu,
rep.by the Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George,
Chennai - 600 009.

2. The District Collector,
Dindigul District,
Dindigul.

3. The Land Acquisition Officer &
Special Tahsildar (ADW) Unit-2,
Dindigul. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorari, calling upon the records relating to the notification No.Na.Ka.1876/96/A dated 3.10.1997 in Form No.1 under section 4(2) of the Act read with Rule 3(1) of the Rules of the Tamil Nadu Acquisition of Land for Harijan Welfare Act, 1978 by the third respondent and to quash the same in respect of the lands bearing survey Nos.235/1 and 235/2 situated at Kalwarpatti Village, Vedasandur Taluk, Dindigul District.

For Petitioner : Mr.V.Karunakaran
for M/s.G.M.Mani Associates

For Respondents: Mr.V.R.Thangavelu,
Government Advocate

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O R D E R

Petitioner seeks to quash the notification No.Na.Ka.1876/96/A dated 3.10.1997 in Form No.1 issued by the third respondent under section 4(2) of the Act read with Rule 3(1) of the Rules of the Tamil Nadu Acquisition of Land for Harijan Welfare Act, 1978, in respect of the lands bearing survey Nos.235/1 and 235/2 situated at Kalwarpatti Village, Vedasandur Taluk, Dindigul District.

2. Petitioner is the owner of the agricultural land comprised in S.Nos.235/1 in Kalwarpatti Village, Vedasandur Taluk, Dindigul District, measuring 1.45.0 H and it is the ancestral property of the petitioner. Petitioner purchased the adjacent agricultural lands comprised in S.No.235/2 in the same village measuring an extent of 0.68.5 H and as such the petitioner is owning 2.13.5 H (about 5.27 acres) as one unit and the said lands are agricultural lands, which is the main source of income for the sustenance of the family.

3. It is averred in the affidavit that for the benefit of the Harijans, land acquisition proceedings have been initiated in respect of the adjacent lands, which were dropped subsequently. But the petitioner's entire land was sought to be acquired for providing house sites to 14 Harijan families and hence the third respondent issued notice under section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, read with Rule 3(1) of the Rules framed thereunder on 3.10.1997 and informed the petitioner that it is necessary to acquire the said lands for providing house sites to Adi Dravidas and called upon him to submit his objection if any and participate in the enquiry to be held on 21.10.1997 at 10.00 a.m. Petitioner appeared for enquiry, who is an illiterate and it is alleged that the petitioner was forced to sign a prepared statement giving consent for acquisition. Thereafter petitioner challenged the said 4(2) notice issued under Rule 3(1) in this writ petition.

4. The grievance of the petitioner is that the notice was served on the petitioner only on 18.10.1997 i.e., three days prior to the enquiry held on 21.10.1997 at 10.00 a.m. and therefore 15 days notice period was not complied with. The petitioner's land being fertile agricultural land, which is the main source of income for his family, cannot be acquired for giving house sites to 14 Harijan families as the entire land is not required. The acquisition proceedings initiated against the neighbouring land owners were not proceeded with and the same were dropped and not dropping the acquisition proceedings initiated against the petitioner is arbitrary.

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5. Third respondent filed counter affidavit wherein it is stated as follows.

(a) The notice under Section 4(2) of the Act dated 3.10.1997 was served to the land owner by the Village Administrative Officer and the same was received by the petitioner. The petitioner appeared before the Land Acquisition Officer on 21.10.1997 and gave statement that he is agreeable to give his land for acquisition and he had a son and daughter and his son was working as Training Officer in a private concern, and that he would inform after consulting with his son before 31.10.1997. However, he has not given any objection as stated. Therefore, a report was submitted by the third respondent to the District Collector, Dindigul, and the same was approved on 18.11.1997. Form-2 notice was published in the District Gazette on 5.12.1997 and Form-3 notice under Rule 5(1) dated 15.12.1997 was issued to the land owner to appear before the third respondent on 31.12.1997 to put forth his objection in this regard.

(b) The land owner avoided to receive Form-3 notice and thereafter the Village Administrative Officer served the notice by affixture on the door of the house of the petitioner. Form-3 notice was published in the conspicuous places such as Revenue Divisional Officer's Office, Palani on 16.10.1997 and in the Collector's Office, Dindigul on 17.10.1997. The valuation proposal was sent by the third respondent on 17.12.1997 to the District Collector for approval and the District Collector by order dated 26.12.1997 approved the valuation of the land to the tune of Rs.1,51,634/- and an award No.17/97-98 dated 31.12.1997 was passed and the same was published in the village by the Village Administrative Officer, Kalwarpatti Village by Tom-tom and signatures of the general public were obtained.

(c) The revenue records were also changed and Rule 12(2) notice dated 31.12.1997 was sent to the petitioner by post. Petitioner having not come forward to receive the award amount, the same was kept under revenue deposit originally and thereafter the compensation amount was deposited by the third respondent at the Sub-Treasury, Dindigul on 27.2.1998.

(d) The lay out plan of the house sites was prepared by the Sub-Inspector of Survey on 17.12.1997, which was approved by the District Adi Dravidar Welfare Officer, Dindigul on 9.3.1998. The approved house sites were freely issued to the notified beneficiaries on 16.3.1998 and all the beneficiaries have taken possession and the writ petition was filed long thereafter and the petitioner obtained interim stay of dispossession only on 17.8.1998.

(e) Insofar as dropping of acquisition proceedings against the neighbouring owners it is stated that during the enquiry it was found that the said land owners were small farmers and they are depending upon the notified lands for their livelihood and hence

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the same were dropped. It is also stated in the counter that the petitioners lands are not virtually agricultural lands and it is only a rain-fed agricultural land, which is suitable for house sites.

(f) It is also specifically stated in the counter affidavit that the notice dated 3.10.1997 was not served just three days prior to the enquiry and it was served well before. The petitioner appeared before the Special Tahsildar and gave statement and after recording the same, it was read out to the petitioner and thereafter petitioner signed the statement and therefore it is wrong to state that the petitioner was forced to sign in the prepared statement.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

7. Only section 4(2) notice is challenged by the petitioner in this writ petition. As stated in the counter affidavit, section 4(1) declaration was already made on 18.11.1997 and the same was published in the District Gazette. The petitioner has not chosen to challenge the said Section 4(1) declaration. Petitioner was issued with notice under Rule 5(1) dated 15.12.1997 to assess the compensation calling upon him to appear on 31.12.1997 at 10.00 a.m. The notice was also served by affixture on the door of the petitioner's house and Form-3 notice was published in the conspicuous places, but the petitioner failed to appear for enquiry on 31.12.1997. Hence the award was passed on 31.12.1997, fixing the compensation, which was published in the Village by the Village Administrative Officer through tom-tom. The revenue records were also changed. Section 12(2) notice was sent to the petitioner by post to receive the compensation, on 29.1.1998. Since the petitioner did not turn up to receive the same, the amount was deposited by the third respondent at the Sub-Treasury, Dindigul on 27.2.1998. The lay out plan for the house sites were prepared by the Special Sub-Inspector of Survey on 17.12.1997, which was approved by the District Adi Dravidar Welfare Officer, Dindigul on 9.3.1998. The approved house sites were issued freely to the notified beneficiaries on 16.4.1998 and all the beneficiaries have taken possession. The impugned order in this writ petition is only a notice dated 3.10.1997 issued under section 4(2), which is challenged only on 11.8.1998.

8. The above facts stated in the counter affidavit are not disputed by the petitioner either by filing reply affidavit or during the course of the arguments. The declaration made under section 4(1) and allotment made to the beneficiaries have not been disputed.

9. In similar circumstances, a Division Bench of this Court in the decision reported in 2005 WLR 325 (Nataraja Gounder v. The State of Tamil Nadu and Another) dismissed the writ appeal filed by the land owner and upheld the decision of the learned single Judge by holding that once acquisition is made and possession of the

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lands been taken over and the lands have also been distributed to the Adi Dravidas, who are the beneficiaries, public interest alone is to be taken into consideration and the acquisition proceedings cannot be interfered with.

10. Here in this case, even according to the affidavit, section 4(2) notice was served on the petitioner. Petitioner also appeared and gave consent for acquisition. Though it is pleaded that consent was obtained by coercion, no supporting document or evidence is produced by the petitioner. The petitioner never gave any complaint to the Police with regard to the alleged coercion by the third respondent for compelling him to sign the prepared statement. In the absence of any contra evidence, it is clear that the petitioner voluntarily gave consent for the acquisition of lands in question pursuant to which the lands are acquired and distributed to the beneficiaries.

11. Learned counsel for the Petitioner cited a judgment of the Honourable Supreme Court reported in AIR 2004 SC 5054 (B.E.M.L. Employees House Building Co-Operative Society Ltd., v. State of Karnataka and others) to the effect that the acquisition proceedings initiated against the other persons were dropped and the proceedings initiated against the petitioner alone is not dropped, which is discriminatory. The said judgment of the Honourable Supreme Court is clearly distinguishable to the facts of this case as the case before the Supreme Court was that there was no distinction between the case of the 5th respondent and the cases of other land owners, whose lands were excluded from the acquisition even though the Special Land Acquisition Officer recommended to exclude the land of the 5th respondent. There the similarity was clearly proved and therefore the Honourable Supreme Court set aside the acquisition on the ground of discrimination. Here in this case, first of all, it is not pleaded that the same acquisition was initiated against others. Secondly, no recommendation was made by the third respondent and in fact the third respondent, after consent given by the petitioner for acquisition, acquired the land, took possession of the lands and the lands were also distributed to the beneficiaries prior to filing of the writ petition.

12. The contention of the petitioner that fifteen days notice was not given to the petitioner after service of notice is unsustainable because even according to the petitioner, he received the notice three days prior to the enquiry and the petitioner appeared and gave his willingness to acquire the lands. Hence there is no prejudice caused to the petitioner by not giving 15 days prior notice. Hence the said contention is also not sustainable.

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13. Taking note of the facts in this case, I hold that there is no merit in the writ petition and consequently the writ petition is dismissed. No costs.

Vr/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
   Adi Dravidar and Tribal Welfare Department,
   Fort St.George, Chennai - 600 009.

2. The District Collector,
   Dindigul District, Dindigul.

3. The Land Acquisition Officer &
   Special Tahsildar (ADW) Unit-2, Dindigul.

+ one cc to M/s. G. M. Mani, Associates sr no. 6728

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